

REMARKS

Claims 1 - 11 and 14 – 22 are pending in the application. Claims 1 - 11 and 14 – 22 have been rejected.

Claims 1 - 11, 14 - 16, 21 and 22 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. More specifically, the Examiner set forth:

Claims 1-11, 14-16, 21 and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In order to be statutory, the claimed invention must produce a useful, concrete, and tangible real-world result. An invention that fails to produce a tangible result is one that involves no more than the manipulation of an abstract idea. In order to be concrete, the result must be substantially repeatable or re-produce the same result. The result is useful when there is a real-world practical application.

Claim 1 recites a series of steps comprising receiving into a website a number of evaluations that are used to generate an indicia of a supplier's performance. Since the method is tangibly embodied, it is not considered to be an abstract idea. However, there is no real-world practical application recited so the method is considered to fail the useful test. (Office Action 02/01/2006, Page 4, lines 5 - 16).

A similar rationale was used in rejecting claims 9, 14, 15 and 21.

However, the examiner has misstated the requirements for a claim to be statutory. There is no specific requirement that a "real world practical application" be recited within a claim and without such a recitation the method "is considered to fail the useful test." (Office Action dated February 1, 2006, page 4.) For a claim to be statutory, when discussing patentable subject matter for computer related inventions, the MPEP sets forth:

The claimed invention as a whole must accomplish a practical result. . . The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concepts, or is simply a starting point for future investigation or research. . . Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention, i.e., why the applicant believes the claimed invention is useful. (M.P.E.P. 2106A, *citations omitted*.)

In the present application, the claims as a whole accomplish a practical result of evaluating a supplier and are thus statutory.

The Federal Circuit has addressed the issue of whether computer software is patentable subject matter in a number of decisions.

For example, in In re Alappat, the Federal Circuit set forth the view that certain types of mathematical subject matter, standing alone, represent nothing more than abstract ideas until reduced to some type of practical application, and thus that subject matter is not, in and of itself, entitled to patent protection. For determining whether a claim is statutory subject matter, the focus must be on the claim as a whole. It is not necessary to determine whether a claim contains, as merely a part of the whole, any mathematical subject matter that standing alone would not be entitled to patent protection. In In re Alappat, the four claimed means elements functioned to transform one set of data to another through what may be viewed as a series of mathematical calculations. But that alone does not justify a holding that the claim as a whole is directed to nonstatutory subject matter. The claim is not so abstract and sweeping that it would wholly preempt the use of any apparatus employing the combination of mathematical calculations recited therein. In re Alappat, 33 F.3d 1526, 31 USPQ2d 1545 (Fed. Cir. 1994).

The Federal Circuit also addressed the issue of patentable subject matter in State Street Bank & Trust Co. V. Signature Fin Group Inc. (State Street). In State Street, the Federal Circuit sets forth:

Today we hold that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces a ‘useful, concrete and tangible result’—a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to -process, machine, manufacture, or composition of matter—but rather on the essential characteristics of the subject matter, in particular, its practical utility. Section 101 specifies that statutory subject matter must also satisfy the other ‘conditions and requirements’ of Title 35, including novelty, nonobviousness, and adequacy of disclosure and notice. See In re Warmerdam, 33 F.3d 1354, 1359, 31 USPQ2d 1754, 1757-58 (Fed. Cir. 1994). For purpose of our analysis, as noted above, claim 1 is directed to a machine programmed with the Hub and Spoke software and admittedly produces a ‘useful, concrete, and tangible result.’ Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557. This renders it statutory subject matter, even if the useful result is expressed in numbers, such as price, profit,

percentage, cost, or loss. State Street Bank & Trust Co. V. Signature Fin Group Inc., 149 F. 3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998).

The Federal Circuit also addressed the issue of whether software embodied on a computer readable media is statutory subject matter in In re Beauregard. The issue in In re Beauregard related to a Board rejection of computer program product claims on the grounds of a printer matter objection. During the pendency of the appeal, the PTO commissioner issued an order that computer programs embodied in a tangible medium are patentable subject matter. Based upon the PTO commissioner's order, the Federal circuit vacated and remanded the appeal. (See e.g., In re Beauregard, 53 F. 3d 1583, 35 USPQ2d 1383 (Fed. Cir. 1995)).

Applicants respectfully submit that the claimed invention is directed to a useful result. For example, claim 1 is directed to the useful result of "evaluating the performance of a supplier" by "generating an indicia of the performance of the supplier" and that the claims define a useful machine for performing the useful result. Accordingly, the claims are statutory.

Claims 1 - 3, 9, 12 - 14 and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Powers, U.S. Publication No. 2002/0040309 (Powers). Claims 4 - 8, 10, 11 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Powers in view of PRTM's Performance Management Group benchmarking service described in Supply Chain Council's Webpage Newsletter of November 1998 describing PRTM's Online Supply-Chain Benchmarking, Pages 4 – 5" (Reference A), "PRTM Webarchive.org webpage dated December 5, 1998" (Reference B), and "Supply Chain Council presentation of May 12, 1999" (Reference C), (all generally referred to as the PRTM documents or PRTM). Claims 15 - 20 stand rejected under 35 U.S.C. § 102 as being anticipated by PRTM. These rejections are respectfully traversed.

In response to Applicant's arguments the examiner set forth:

The examiner notes that the terms, "team member of the customer", "team leader of the customer" and "supplier" are nonfunctional descriptive material and do not make the claim patentably distinct over the prior art. Powers fully teaches a website where any number of evaluations of a supplier can be entered, including 3, in order to generate an indicia of the suppliers performance. The data labels as cited in the claim do not change the functional relationships as claimed of data in the form of evaluations being entered into the system. Essentially, the functioning of entering three evaluations into a system to

generate an indicia does not patentably distinguish the invention over the prior art (Office Action 02/01/2006, Page 2, lines 9 - 18).

Applicants respectfully maintain that the terms "team member of the customer", "team leader of the customer" and "supplier" should be given patentable weight which can be used in distinguishing the claims over the prior art. Examples of "nonfunctional descriptive material", provided by the MPEP include music, literature, art, photographs, mere arrangements or compilations of facts or data. (M.P.E.P. §1206 IV B 1 (b).) In the present application, the terms that the Examiner maintains are nonfunctional descriptive material are actually distinguishing terms related directly to the invention as claimed.

Additionally, the Examiner set forth:

Furthermore the examiner notes that in response to applicant's arguments, the recitation of "a supplier, the supplier including at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951) (Office Action 02/01/2006, Page 3, lines 1 - 11).

Applicants respectfully maintain that the recitation of these terms occurs not only within the preamble but also within the body of the claims. Accordingly, these terms must be given patentable weight.

Additionally, the Examiner has set forth that Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguished them from the references. Applicants respectfully disagree with this position of the Examiner. However, in an effort to expedite prosecution, Applicants will attempt to provide additional specificity regarding how the claims patentably distinguish over the references.

The present invention generally relates to evaluating a customer's suppliers. The invention teaches a method for electronically compiling analysis of a supplier's performance from team members, the supplier and a team leader. The invention discloses several measures of

efficiency of each supplier and further discloses reports to compare suppliers to other suppliers of the same, or similar, components. Additional reports can be generated to show historical trend of the supplier's performance. An embodiment of the invention allows suppliers to review their final scorecards and compare their scorecards to other suppliers of the same, or similar, components.

More specifically, the present invention, as set forth by independent claim 1, relates to a method for a customer to evaluate performance of a supplier where the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider. The method includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website, receiving a third evaluation of the supplier submitted electronically by the supplier into a customer website, and generating an indicia of a supplier's performance based on the first, second and third evaluation where the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 9, relates to a system for evaluating a supplier where the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider and which includes a computer system. The computer system includes a computer program product encoded in computer readable media and is operable to receive a first evaluation of a supplier submitted by a team member of a customer of the supplier, receive a second evaluation of the supplier submitted by a team leader of the customer, receive a third evaluation of the supplier submitted by the supplier and generate an indicia of the supplier's performance based on the first, second and third evaluation. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 14, relates to a computer program product encoded in computer readable media. The computer program product includes

instructions, executable on a computer system, configured to receive a first evaluation of a supplier submitted electronically by a team member of a customer of the supplier, receive a second evaluation of a supplier submitted electronically by a team leader of the customer, receive a third evaluation of the supplier submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 15, relates to a system for evaluating a supplier which includes a computer system. The computer system includes a data storage device. The data storage device stores data for a supplier performance among suppliers supplying a class of components. The data includes data representing quality of components supplied by each supplier, data representing cost of components supplied by each supplier, data representing availability of the components from each supplier, data representing service performance of each supplier, and data representing a top performing vendor among the suppliers supplying the class of components. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 17, relates to a method of evaluating the performance of a supplier. The performance of the supplier is determined from at least one of a group. The method includes determining a best supplier in the class of suppliers, where the class of suppliers are those suppliers supplying a component to a manufacturer and where the determination is performed by a computer system. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

The present invention, as set forth by independent claim 21, relates to a method of evaluating the performance of a supplier. The performance of the supplier is determined from at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider. The method includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the

supplier, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer, and generating an indicia of a supplier's performance based on the first and second evaluation. The supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

Powers generally relates to evaluation tools and discloses a performance evaluation system which uses productivity and quality data to evaluate the performance of an individual, group, process or other suitable type of item or operation. (See, e.g., Powers, ¶21.) The system is deployed on a three tiered architecture having a client space, a server application space and a database space. (See, e.g., Powers, ¶22.) Powers discloses a plurality of types of users that provide information to the evaluation system, these users include a sales manager, a product manager and a product agent. (See, e.g., Powers ¶¶ 38, 40 and 44 and Powers Figures 2 and 3.) However, Powers does not disclose as one of these types of users the actual supplier or vendor being evaluated.

Reference A of the PRTM documents discloses that the performance measurement group (PMG), a subsidiary of Pittiglio Rabin Todd & McGrath (the PRTM organization), was selected to undertake a new benchmarking study. The benchmarking study is intended to provide an online subscription series to map companies supply-chain data to a predefined council model. The subscription series is intended to offer cross industry reports that analyze key drivers of supply-chain performance, key metrics for measuring overall supply-chain performance and drilling down into specific functional areas, comparative performance data from companies of a variety of industries, best practices of top performers and online historical supply-chain benchmarking data for trending purposes (Reference A, pages 4 and 5.) Reference B of the PRTM documents sets forth an apparent marketing document of the PRTM organization which discusses benchmarking studies that PRTM conducts for its clients. Reference C of the PRTM documents discloses a slide presentation which presents a representative analysis of a supply chain scorecard. The metrics include data on delivery performance and quality, flexibility and responsiveness, cost and assets. (Reference C, page 22.)

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method for a customer to evaluate performance of a supplier where *the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by *a team member of a customer of the supplier* into a customer website, receiving a second evaluation of the supplier submitted electronically by *a team leader of the customer* into a customer website, receiving a third evaluation of the supplier submitted electronically by *the supplier* into a customer website, and generating an indicia of a supplier's performance based on the first, second and third evaluation, much less such a method where *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 1. Accordingly, claim 1 is allowable over Powers and the PRTM documents. Claims 2 - 8 depend from claim 1 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier where *the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a system which includes a computer system having a computer program product encoded in computer readable media where the computer program product is operable to receive *a first evaluation of a supplier submitted by a team member of a customer of the supplier*, receive *a second evaluation of the supplier submitted by a team leader of the customer*, receive *a third evaluation of the supplier submitted by the supplier*, much less where the computer program product generates an indicia of the supplier's performance based on the first, second and third evaluation and *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 9. Accordingly, claim 9 is allowable over Powers and the PRTM documents. Claims 10 and 11 depend from claim 9 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a computer program product encoded in computer readable media where the computer program product includes instructions configured to receive *a first evaluation of a supplier submitted*

electronically by a team member of a customer of the supplier, receive a second evaluation of a supplier submitted electronically by a team leader of the customer, receive a third evaluation of the supplier submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations and the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider, all as required by claim 14. Accordingly, claim 14 is allowable over Powers and the PRTM documents.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier which includes a computer system which includes a data storage device where the data storage device stores *data for a supplier performance among suppliers supplying a class of components* and the data includes data representing quality of components supplied by each supplier, data representing cost of components supplied by each supplier, data representing availability of the components from each supplier, data representing service performance of each supplier, and data representing a top performing vendor among the suppliers supplying the class of components and the *supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 15. Accordingly, claim 15 is allowable over Powers and the PRTM documents. Claim 16 depends from claim 15 and is allowable for at least this reason.

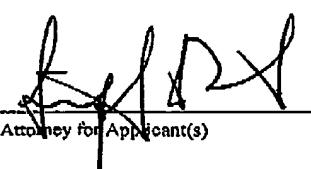
Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier where the performance of the supplier is determined from at least one of a group and the method includes determining a best supplier in the class of suppliers, where *the class of suppliers are those suppliers supplying a component to a manufacturer wherein the determining is performed by a computer system the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 17. Accordingly, claim 17 is allowable over Powers and the PRTM documents. Claims 18 - 20 depend from claim 17 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier wherein the performance of the supplier is determined from *at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving *a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier*, receiving *a second evaluation of the supplier submitted electronically by a team leader of the customer*, and generating an indicia of a supplier's performance based on the first and second evaluation and *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 21. Accordingly, claim 21 is allowable over Powers and the PRTM documents. Claim 22 depends from claim 21 and is allowable for at least this reason.

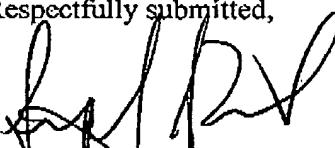
CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being transmitted via facsimile to the USPTO on April 28, 2006.


Attorney for Applicant(s)

4/28/06
Date of Signature

Respectfully submitted,

Stephen A. Terrile
Attorney for Applicant(s)
Reg. No. 32,946